IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 161 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

ASHOKA MILLS LTD

Appearance:

NOTICE SERVED for Petitioner No. 1

MR BB NAIK for MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following questions have been referred to this court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B'.

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has been right in law in confirming the view taken by the Commissioner of Income-tax (Appeals) in deleting (i) the addition made on account of the expenditure of medical benefits and (ii) personal accident insurance premium of Managing director?

2. Whether the view taken by the Commissioner of Income-tax (Appeals) and confirmed by the Appellate Tribunal that the expenditure on medical benefits and personal accident insurance premium of Managing Directors should not be considered for the disallowance under section 40(c) of the Income-tax Act, 1961, is right in law?

3. Whether the Appellate Tribunal is right in law and on facts in confirming the deletion of the disallowance in respect of the payment made to Mettur Beardsell for the use of trade mark "Tabilised"?

4. Whether the Appellate Tribunal is right in law and on facts in holding that the assessee is entitled to the allowance of the expenditure incurred in connection with the issue of bonus shares?

5. Whether the Appellate Tribunal is right in law and on facts i confirming the view taken by the Commissioner of Income-tax (Appeals) in allowing contribution of Rs. 1,50,000/- to CKNL Charitable Trust as revenue expenditure?"

2. We have heard learned advocate Shri B.B. Naik appearing for the revenue. Though served, nobody has appeared for the respondent assessee.

3. So far as the first two questions are concerned, it has been submitted by the learned advocate that both the questions have been answered by this court during the pendency of this reference. Looking to the fact that

both the questions involve similar legal issues, we give a common answer to the first two questions.

4. So far as disallowance with regard to expenditure incurred for medical benefits of the Managing Directors are concerned, it has been held by this court in the case of Gujarat Steel Tubes Ltd. v. CIT, 210 ITR 358, that the said expenditure is subject to the ceiling laid down in view of the provisions of sec. 40(c) of the Act. In the circumstances, we answer the question with regard to expenditure of medical benefits given to the Managing Directors in the negative i.e. against the assessee and in favour of the revenue.

5. So far as the payment with regard to insurance premium on the personal accident policy of the Managing Director is concerned, it has been decided by this court in the case of CIT v. Ambica Mills Ltd., 236 ITR 921 that the said expenditure would not be subject to the ceiling laid down under the provisions of sec. 40(c) of the Act. We, therefore, answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

6. So far as the third question is concerned, it pertains to disallowance with regard to payment made to M/s. Mettur Beardsell for the use of trade mark "Tabilised". Similar question had been raised before this court in the case of CIT v. Ashoka Mills Ltd., 218 ITR 526. This court had answered the question in the affirmative i.e. in favour of the assessee and against the revenue. We, therefore, answer the said question in the affirmative i.e. in favour of the assessee and against the revenue.

7. The fourth question pertains to the amount of expenditure incurred in connection with issuance of bonus shares. A similar question had been referred to this court in the case of Gujarat Steel Tubes (supra). Looking to the law laid down by this court in the said judgment, we answer the question in the negative i.e. against the assessee and in favour of the revenue.

8. So far as the fifth question is concerned, we are unable to answer the said question for the reason that the Assessing Officer had disallowed the expenditure in the nature of contribution of Rs. 1,50,000/- given to CKNL Charitable Trust as revenue expenditure. The Assessing Officer had relied upon his earlier order passed in case of another assessee. Even in appeal before the CIT and the Tribunal, the authorities had

followed the earlier orders. The learned advocate appearing for the revenue is unable to inform us whether any final decision has been taken in the case which was relied upon by the authorities while deciding the said issues. In view of the fact that we do not have relevant material with us, we decline to answer the said question.

The reference thus stands disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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